

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 915 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MUSTAKALI K SAIYAD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 915 of 1987
MR PK PAREKH for appellants
MS HANSA PUNANI, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/02/2003

ORAL JUDGEMENT

The present appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "the Code") has been filed by the two appellants above named,

original accused nos. 2 and 3 in Sessions Case No. 72 of 1987 before the learned Additional Sessions Judge, Kheda at Nadiad. The case against the present appellants could be gathered from the charge framed against them as well as three other accused persons which is placed at page 31, Ex. 3. According to the charge, on 14/11/85, at about 9.30 PM, certain police personnel were present on duty at Jyoti Cinema at Village Thasra in Thasra Taluka of Kheda District. At that time, because of Bhai-Bhij festival, many persons had gathered on the spot, for getting entry in the said Cinema House. It is the case of the prosecution that it was a houseful show and therefore, people could not get entry inside the Cinema house. That, some persons were selling tickets illegally and the police personnel on duty tried to stop them from doing so. In the process that followed, there was hot exchange of words between the two appellants and other accused persons on one hand and the police personnel on the other. In the process, the police personnel on duty were beaten by five accused persons, including the two appellants, by means of a hockey stick and a knife. The police personnel were taken to the dispensary and FIR was filed against the appellants and three other accused persons who are not before this Court.

2. The concerned Police Officer investigating the said offence filed chargesheet before the learned Judicial Magistrate First Class and thereafter, the case was committed to the court of Sessions. There it was registered as Sessions Case No. 72 of 1987. The appellants and other accused persons were provided with copies of police papers. Charge, Ex. 3, was framed. It was read over and explained to the appellants and other three accused persons. They pleaded not guilty to the said charge and thereafter, evidence was recorded. Further statements of the accused persons were recorded under section 313 of the Code. Arguments were heard and at the end of the trial, the learned Additional Sessions Judge, Kheda at Nadiad, found the two appellants guilty for the aforesaid offence. Therefore, the learned Judge recorded an order on 27/11/87, stating that the appellant, Mustakali Kamarali Saiyed was found guilty for an offence punishable under Section 333 of IPC for causing grievous hurt to the Police Constable on duty namely Kanjibhai Laxmanbhai. He was also found guilty for an offence punishable under Section 332 IPC for having caused injury to Police Head Constable, Ashabhai Bhagwanbhai who was also then on duty.

3. The learned Judge also found appellant no. 2,

Asmatali Kamarali Saiyed guilty for an offence punishable under Section 332 IPC for voluntarily causing hurt to Police Constable, Ambalal Kalidas, who also was on duty at the relevant time.

4. The accused were also charged for offences punishable under Section 426 IPC also, but, they were acquitted of the said charge.

5. After hearing the arguments on the point of quantum of punishment, the learned Additional Sessions Judge, passed an order on 27/11/87, under which the learned Judge inflicted on the first appellant sentence of RI for three years and a fine of Rupees Three thousand. In default of payment of fine the said appellant was required to suffer further RI for three months. So far, appellant Asmatali Kamarali Saiyed is concerned the learned Judge directed him to suffer RI for one year and he was directed to pay fine of Rupees One thousand and in default of payment of fine he was required to further undergo RI for one month.

6. Feeling aggrieved by the said judgment and conviction order of the trial court the two appellants have preferred this appeal before this court under Subsection 2 of Section 374 of the Code.

7. Here, it has been contended that there is solitary evidence of police personnel and though there was a mob of nearly two thousand persons, no other witness has been examined to support the case of the prosecution. It has also been contended that the evidence of the eye witnesses is in contradiction with the evidence of the Medical Officer. It is further contended that there was no necessity for the injured to be carried to Dakor Hospital though the medical facility was available at Thasra itself. That the FIR was filed very late and the FIR which has been treated to be FIR could not be treated to be FIR. That on the whole the judgment and conviction order of the trial court are illegal and erroneous and deserve to be set aside.

8. It is, therefore, prayed that the present appeal be allowed, the judgment and conviction order of the trial court be set aside and the appellant be acquitted of the offences punishable under Section 332 and 333 IPC. In the alternative, it has been pleaded that since the offence had taken place in the year 1985 and conviction has been recorded in 1987, lenient view may be taken, so far the quantum of punishment is concerned.

9. On receipt of the appeal it was admitted and the appellants were enlarged on bail.

10. I have heard Mr.P K Parikh, learned advocate for the two appellants and Ms.Hansa Punani, learned APP for the State. They have taken me through the evidence on record as well as through the observations of the trial court during the course of the judgment.

11. It is not much in dispute that as per the case of the prosecution on 14/11/85 it was Bhai-bhij festival and people in large number had gathered at Jyoti Cinema at Village Thasra in Thasra Taluka of Kheda District. It seems that since there was overcrowding and since the tickets were illegally sold outside the office of the Cinema house, there was some quarrel between the police personnel and the appellants and other accused persons. In fact, one of the police constables informed the Manager of the cinema house about the over crowding. The Manager had, then called for additional police force and the additional police force was also brought to the spot. In the meantime, as per the case of the prosecution, the two appellants inflicted blows with hockey stick and knife on the injured police witnesses and therefore the FIR came to be filed.

12. In support of the case of the prosecution and in order to prove the case against the appellants, the prosecution has examined witnesses before the trial court. PW-1, Ashabhai Bhagwanbhai, Ex. 13, is a First Grade Jamadar, who was then posted on duty at the said cinema house, at the relevant point of time. According to his evidence, he was posted on duty from 8.00PM onwards. That the booking started at about 8.30PM, that the persons desirous of visiting the cinema house were required to stand in a queue and ultimately all the tickets were sold out and the show was houseful. That, thereafter, one Shaukatali Kamarali Saiyed was found selling tickets in black market outside the cinema house and therefore, inquiry was made. In the meantime, appellant no. 1 Mustakali Kamarali Saiyed ran to the spot with a hockey stick in his hand and started abusing the witness and thereafter he dealt a hockey stick blow on the witness Kanjibhai Laxmanbhai on his left elbow and according to the witness there was fracture of the elbow bone of Kanjibhai Laxmanbhai, on account of the said blow. It is further deposed by the witness that another accused, appellant no. 2 also came to the spot and inflicted a blow of knife on his head. He dealt a knife blow on Constable, Ambalal Kalidas, which landed on his thigh. That since there was overcrowding and since the

crowd did not disperse despite request of the police personnel, the police personnel went for a lathi charge on the mob at which the persons present in the mob pelted stones at them. That, additional police force was also called for. Thereafter, other police personnel were also found having sustained injuries. Ultimately FIR was filed.

13. The witness was cross-examined at a great length. Efforts were made to show that he was not telling the truth. However, it is found that during the lengthy cross-examination the learned advocate appearing for the defence could not bring any fruitful material from his lengthy cross-examination.

14. Kanjibhai Laxmanbhai, Ex. 27, PW-7 is also witness of the prosecution. He was also on duty at the said cinema house, on the said date at night hours. According to his evidence the tickets were sold out and one Shaukatali was found selling tickets in black market. That Head Constable, Ashabhai Bhagwanbhai inquired about the same from him. At that time appellant no. 1 ran to the spot and dealt a hockey stick blow on the hand. He also states that appellant no. 2, Asmatoli Kamarali Saiyed had also run to the spot and he dealt a knife blow on the hand of Ambalal Kalidas, which landed on his thigh.

15. Agansingh Krishnabhai, Ex. 36, PW-12 was also a Police Constable on duty and he also supports the evidence of the aforesaid two witnesses.

16. Sameway, Somabhai Kachrabhai Parmar, Ex. 37, PW-13 was also a witness present at the spot. He was also a Police Constable on duty and has also supported the evidence given by the previous police witnesses.

17. Similar is the case of the evidence of Dhudabhai Sabrubhai, Ex. 38, PW-14. He has also lent support to the aforesaid witnesses of the prosecution.

18. Ambalal Kalidas, Ex. 39, PW-15 was a Constable on duty in a civil dress. He has also supported the case of the prosecution.

19. Jaswantbhai Matisingh Chaudhary, Ex. 40, PW-16 was a Constable on duty at the Police Station. He has stated that he had received a telephonic message from the Manager of the cinema house and at his instance additional police force was sent to the said place.

20. Therefore, these witnesses have supported one another and their presence on the spot, cannot be disputed. These witnesses have given the names of the appellants and have also described as to what was the act done by the present appellants. It is required to be considered that during the course of cross-examination of these witnesses, nothing fruitful could be derived with respect to the presence of appellants and even with respect to the identification of the appellants, nothing could be brought out during the course of cross-examination. Therefore, these witnesses have consistently deposed before the trial court that the two appellants had given hockey stick and knife blows on the witnesses concerned.

21. Then we find that the above evidence gets support from the medical evidence. In fact, two Doctors have been examined by the prosecution in support of the case of the prosecution. Dr. Shirishbhai Patel, Ex. 17, PW-5 had examined the police witnesses. He has deposed that he had examined Ashabhai Bhagwanbhai on 15/11/85 and it was noticed that this witness had injury and swelling on left forearm and had injury and swelling on right hand. Both the injuries were admeasuring 1"X1". Similar is the case of Somabhai Kachrabhai Ramabhaai, who was examined by the witness and had noticed that he had injury on his back and another injury on his left forearm. The witness had also examined Agansingh Krishnabhai who had injuries on his right hand and right eye.

22. Sameway, Dhudabhai Sabrubhai was exzamed by the witness and he had injuries on his right leg. The witness had issued medical certificates describing the injuries noticed on the persons of these witnesses.

23. These certificates have been produced on record at Ex. 18, 19, 20 and 21.

24. The learned advocate for the appellant has contended that as per the cross-examination of this witness, these injuries could be caused within 12 hours and not after 14 hours. It is the case of the learned advocate for the appellants that the incident took place at about 9.30PM on 14/11/85 and the witness was taken to said dispensary at 11.00PM on 15/11/85. That, therefore, more than twelve hours had gone and therefore, according to the evidence of this witness these injuries could be caused within twelve hours and not beyond fourteen hours and in that event, it can not be said that the evidence of this witness does not support the case of the

prosecution. After all the time stated by the witnesses would be to some extent, approximate time. Moreover, when the witnesses have positively said that they were injured at about 9.30 PM and there was a gap of a couple of hours here or there, then, in that event the Court should not place additional weight on the evidence of the Medical Certificate in order to reject the consistent testimonies of the injured eye witnesses. It is more so when the history given by the witness was that it was an injury sustained with hockey stick.

25. Another witness, Dr.Snehalkumar Priyadarshi, Ex. 22, PW-6 has also deposed before the trial court that he had examined Constable Kanjibhai Laxmanbhai and had found that he had 3 cms X 1/4 irregular C.L.W. and it was also noticed that there was fracture of elbow bone. He has further stated that even when X-ray was taken and the fracture of elbow bone was confirmed. This shows that the injury was grievous in nature.

26. It is required to be seen that this witness has deposed that the injured was taken to him at 12.15 midnight on 14/11/85. Therefore, so far, this witness is concerned there is absolutely no delay in sending the witness to the dispensary.

27. It is true that the offence took place at about 9.30 PM. Even, thereafter the mob was required to be dispersed and thereafter, the police would go to the police station and file FIR. Therefore, there was some time gap between the actual incident and the lodging of FIR. Therefore, the FIR cannot be said to have been filed late and consequently the injured can not be said to have been sent late to the Hospital. Even according to this evidence, Ambalal Kalidas was also examined by him and he had incised skin-deep wound on inner aspect of right thigh. According to the witness, the injuries were simple.

28. The witness had also examined Mustakali Kamarali Saiyed, present appellant no. 1, who had his nose bleeding at the relevant point of time. An attempt was made to argue that lathi charge was operated without the permission of a superior officer and without giving intimation to the superior officers.

29. We are not here to decide as to whether there was justification on the part of the police personnel for the lathi charge at the relevant point of time. Fact remains that the evidence of these witnesses has been supported by the medical witnesses and there is no reason for these

Medical Officers to give false evidence before the trial court.

30. It has also been contended that since there was a dispensary at Thasra, there was no necessity for the witnesses, to be sent to Dakor. Once the injury has been inflicted on a particular person, it would be immaterial as to whether a witness has been examined by a Medical Officer of Dakor or of Thasra. Fact remains that witnesses were examined by the concerned Medical Officers and that the case history was given by the witnesses to the Medical Officers without any loss of time.

31. It is also a fact that the names of the appellants have been disclosed at the earliest stage in the FIR itself. The details as to how the incident took place have also been given in the FIR which has been filed without any loss of time. An attempt was made to argue that the FIR could not be treated to be FIR in view of the fact that the police was informed about the incident in question, by the Manager of the Cinema house. That information given by the Manager of the cinema house at the instance of the Police Constable, cannot be treated to be FIR for any purpose. The Manager only conveyed that there was disorder in the mob which had gathered together at the cinema house. There was no mention that the Police Constables were beaten by the appellant or other accused persons. So far the present offence is concerned, it was never conveyed to the Police Station by the said Manager. In that view of the matter the said information conveyed by the Manager of the cinema house cannot be treated to be FIR. Therefore, the FIR given by the Police Constable of the concerned Police Station, disclosing the injuries inflicted on the Police Constables by the appellants and other accused persons has to be treated to be an information disclosing a cognizable offence involving the appellants and other accused persons.

32. In above view of the matter, it is true that other witnesses have not been examined, but it is the normal psychology of a mob, that when an incident starts taking place, some persons would gather together but when they find that the incident is likely to be converted to an offence and they are likely to be cited as witnesses then the persons gathering there, would gradually start running away from the spot and therefore, it could not be said that independent witnesses were available and that they have not been examined. Here the evidence on record is that injured eye witnesses had opportunity to see the appellants from the closest possible distance. The names

of the appellants have been disclosed right from the beginning which clearly shows that the witnesses knew the appellants at or before the time of the incident. There is no serious dispute about the identification of the appellants during the course of the lengthy cross-examination. In that view of the matter, simply because the evidence of the Police witnesses has not been supported by other independent witnesses, it could not be treated to be a ground for rejecting the evidence tendered by the witnesses who are police personnels.

33. In other words, the trial court cannot be said to have committed error in relying upon the oral evidence of the witnesses supported by the FIR and the medical evidence. The trial court has recorded detailed reasons for accepting the testimonies of the witnesses in question. In fact, it seems that the judgment of the trial court runs in not less than 55 pages. The evidence of the witnesses has also been discussed at length and as said above, cogent reasons have been given by the trial court for accepting the evidence of the said police personnels. In that view of the matter, when the trial court has not committed any error in appreciation of the evidence on record, there is no reason to differ from the view taken by the trial court. It is more so when the trial court had all opportunities with it to see the witnesses while they tendered evidence from the evidence box.

34. In other words, the judgment and conviction order of the trial court are not found to be illegal nor they are found to be erroneous from any angle and therefore, there is no alternative but to confirm the judgment and conviction order of the trial court and also to confirm the reasonings recorded by the trial court and the findings on the basis of aforesaid reasons in the said judgment.

35. In short, the judgment and conviction order of the trial court are not erroneous and hence deserve to be confirmed.

36. At this stage, the learned advocate for the appellant has contended that the incident took place in 1985 and conviction took place in 1987. That therefore, looking to the passage of time, this Court should take a lenient view of the matter. So far the quantum of punishment is concerned, it is required to be considered that though the incident took place in 1985 and though the conviction took place in 1987 and the matter is being taken up in 2003, it is also a matter of record that the

matter was brought on board time and again, but for one reason or the other, it could not be taken up for hearing. It is required to be considered that Police Constables on duty were beaten in a public place by the appellants. It is more so when the brother of the first appellant was selling cinema tickets in black market outside the cinema house and therefore, the police personnel were on duty to stop the black marketing of tickets, an illegal act of the brother of the first appellant. While the police constables were on duty for stopping the illegal activity, the brother of the first appellant rushed to the spot and started hitting the constables on duty. This would, naturally, be an act to prevent the police officers from carrying out their official duties, when the police officers on official duties are being ill-treated by the accused in a public place in this manner, then strict action is required to be taken with a view to have a deterrent effect on the accused and other persons and this would also encourage the police personnel in proper discharge of their duties.

37. In that view of the matter, the quantum of punishment is not required to be disturbed on account of delay in disposal of the appeal, when the delay cannot be attributed to the prosecution or to prosecutors.

38. Suffice is to state that this appeal is meritless and deserves to be dismissed. Accordingly, the appeal is ordered to be dismissed, the judgment and conviction order of the trial court are confirmed. The appellants are on bail and therefore, their bail bonds are cancelled and they will naturally surrender to custody. The trial court will naturally issue non-bailable warrants to the appellants for allowing them to surrender to custody and to serve out the remaining sentence. The trial court will also intimate the sureties in order to enable them to see that the appellants surrender.

(D. P. Buch, J.)

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